

HAROLD M. JAFFE, ESQ.

CASB #57397

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Attorney for Defendants JOHN SRAMEK and BERNADETTE SRAMEK, individually and as Trustees of the John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust and Harold M. Jaffe, In Pro Per

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ALISE MALIKYAR,

CASE NO. C07-03533 WHA

Plaintiff,

vs.

**DEFENDANTS' EX PARTE APPLICATION
TO DISMISS ACTION FOR FAILURE TO
COMPLY WITH COURT ORDER THAT AN
AMENDED COMPLAINT BE FILED BY
JANUARY 7, 2008; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
[FRCP 41(b)]**

JOHN SRAMEK, BERNADETTE
*SRAMEK, HAROLD M. JAFFE, John S.
Sramek, Jr. and Bernadette D. Sramek
Revocable Living Trust, and DOES 1 -
100,

Defendants.

CTRM: 9 - Hon. William Alsup

I, HAROLD M. JAFFE, declare:

1. I am an attorney at law duly licensed to practice in all courts of the State of California and am attorney of record for defendants, JOHN SRAMEK ("J. SRAMEK"), BERNADETTE SRAMEK ("B. SRAMEK"), HAROLD M. JAFFE ("JAFFE"), in pro se, and John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust ("the SRAMEK TRUST") (or hereinafter collectively referred to as "defendants"), herein.

2. The matters stated herein are within my own personal knowledge and if called as a witness I could and would competently testify thereto. Your declarant is making this declaration in support of defendants' ex parte application to dismiss this action for plaintiff's failure to comply with this Court's Order of January 4, 2008, that plaintiff, ALISE MALIKYAR ("MALIKYAR") file an amended complaint remain January 7, 2008.

3. This action was commenced on June 11, 2007, in the Alameda County Superior Court, Case No. RG-07-330092. On or about July 7, 2007, defendants filed their

1 answer to plaintiff's complaint and removed this case to this Court.

2 4. On or about November 8, 2007, this Court entered an order granting
3 defendants' motion for summary judgment, and ordered that an amended complaint be
4 filed by plaintiff on or before January 7, 2008.

5 5. On January 2, 2008, plaintiff filed an ex parte application to extend the time
6 to file an amended complaint. On January 3, 2008, defendants filed their opposition to
7 plaintiff's ex parte application to extend her time to file an amended complaint.

8 6. On January 4, 2008, this Court entered an order denying plaintiff's ex parte
9 application to extend time to file an amended complaint, and further ordered plaintiff's
10 deadline to file an amended complaint remain January 7, 2008.

11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct and this declaration is executed on January 8, 2008, at
13 Oakland, California.

14
15
16 /s/
17 HAROLD M. JAFFE

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 No amended complaint having been filed or served on defendants within the time
20 provided for by this Court's order, defendants hereby move for involuntary dismissal of
21 plaintiff's complaint pursuant to *inter alia* FRCP 41(b), *Yourish v. California Amplifier*, (9th
22 Cir. 1999) 191 F.3d 983, 988.

23 Respectfully submitted,

24
25 DATED: January 8, 2008 By: /s/
26 HAROLD M. JAFFE, ESQ., Attorney for
27 Defendants
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